

**Assembly Bill No. 728**

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Passed the Assembly    May 8, 1997

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*Chief Clerk of the Assembly*

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Passed the Senate    June 19, 1997

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_ day  
of \_\_\_\_\_, 1997, at \_\_\_\_ o'clock \_\_M.

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*Private Secretary of the Governor*

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## CHAPTER \_\_\_\_

An act to amend Section 1275 of the Penal Code, relating to bail.

## LEGISLATIVE COUNSEL'S DIGEST

AB 728, Bowler. Bail: serious felonies.

Under existing law, in setting, reducing, or denying bail, the judge or magistrate is required to take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or hearing of the case.

This bill would provide that, before reducing the bail of a person charged with a serious felony below the amount established by the bail schedule approved for the county, the court shall make a finding of unusual circumstances and shall set forth those facts on the record. The bill would provide that “unusual circumstances” do not include the fact that the defendant has made all prior court appearances or has not committed any new offenses.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1275 of the Penal Code is amended to read:

1275. (a) In setting, reducing, or denying bail, the judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or hearing of the case. The public safety shall be the primary consideration. No bail shall be accepted unless the judge or magistrate is convinced that no portion of the consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution was feloniously obtained.



In considering the seriousness of the offense charged, the judge or magistrate shall include consideration of the alleged injury to the victim, and alleged threats to the victim or a witness to the crime charged, the alleged use of a firearm or other deadly weapon in the commission of the crime charged, and the alleged use or possession of controlled substances by the defendant.

(b) In considering offenses wherein a violation of Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code is alleged, the judge or magistrate shall consider the following: (1) the alleged amounts of controlled substances involved in the commission of the offense, and (2) whether the defendant is currently released on bail for an alleged violation of Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code.

(c) In any case wherein a person is arrested for a violation of Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code and the person is on probation for a violation of one of those sections or where an allegation pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code may be pleaded and proven, and a peace officer has reasonable cause to believe that the consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for bail was feloniously obtained, the peace officer shall prepare a declaration under penalty of perjury setting forth the facts and circumstances in support of his or her belief and file it with a magistrate, as defined in Section 808, in the county in which the offense is alleged to have been committed or having jurisdiction of the person of the defendant, or a commissioner of the magistrate, requesting an order denying bail. The defendant either personally, or through his or her attorney, friend, or member of his or her family, may also make application to the magistrate for release on bail. The magistrate or commissioner to whom the application is made may deny release on bail pending the hearing described in Section 825. If, after the application is made, no order granting or denying bail is issued within



eight hours after booking, the defendant shall be entitled to release on posting the amount of bail set forth in the applicable bail schedule.

This subdivision shall only apply for the period described in Section 825 in which an arrestee shall be taken to a magistrate.

(d) The bail of any defendant found to have willfully mislead the court regarding the source of bail may be increased as a result of the misrepresentation. The misrepresentation may be a factor considered in any subsequent bail hearing.

(e) Before a court reduces bail below the amount established by the bail schedule approved for the county, for a person charged with a serious felony, the court shall make a finding of unusual circumstances and shall set forth those facts on the record. For purposes of this subdivision, “unusual circumstances” does not include the fact that the defendant has made all prior court appearances or has not committed any new offenses.



Approved \_\_\_\_\_, 1997

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*Governor*

